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Forty-eighth session

REPORT OF THE SEVENTH MEETING OF THE STANDING COMMITTEE
(30 April - 1 May 1997)

I. INTRODUCTION

1. The meeting was opened by the Deputy Chairman of the Executive Committee, His Excellency, Ambassador Björn Skogmo (Norway). The Chairman took the opportunity to welcome the delegations of Poland and South Africa as newly elected members of the Executive Committee of the High Commissioner's Programme.

II. ADOPTION OF THE AGENDA OF THE SIXTH MEETING AND THE REPORT OF THE FIFTH MEETING

2. The Provisional Agenda (EC/47/SC/CRP.15) and the Draft Report of the Sixth Meeting of the Standing Committee (EC/47/SC/CRP.14 and Corr.1) were both adopted without revision. An amended draft decision on the social and economic impact of large refugee populations on host developing countries, forwarded from the sixth meeting of the Standing Committee, was adopted without further revision (annex I).

III. PROGRAMME AND FUNDING ISSUES

3. The Standing Committee had before it a document entitled, *Update on Programme and Funding Projections for 1997* (EC/47/SC/CRP.16) and a related draft decision.

4. The agenda item was introduced by the Director of the Division of Operational Support (DOS). With regard to 1997 expenditure, he provided up to date information on the use of the Voluntary Repatriation Fund and the Programme Reserve. In relation to 1998 programmes, he foreshadowed some difficulties in relation to the likely level of 1998 General Programmes. On present indications (see next paragraph), he indicated that it might not be possible to maintain the level of 1998 General Programmes at their 1997 level and that there would not be any scope to shift statutory activities currently being funded under Special Programmes to 1998 General Programmes. The Director informed delegations that a clearer picture of the 1998 needs under both General and Special Programmes

should emerge by the time of the June meeting of the Standing Committee, indicating that by that time the Operations Review Board will have completed its work.

5. The current funding trends were reviewed by the Head of the Funding and Donor Relations Service (FDRS). He concentrated on two areas of potential funding problems for 1997. The first of these related to General Programmes. With diminished secondary income and carry-over, the Head of the Service explained that UNHCR's funding projections showed a possible drop of contributions of some $ 20 million. Further, he informed delegations that, if not reversed, this trend would have considerable impact, particularly on next year's General Programmes' target. He went on to explain that several donors appeared unable to maintain their 1996 General Programmes funding levels. In addition, he indicated that the strong US dollar had the effect of diminishing contributions from countries contributing in their own currencies. Secondly, he appealed to donors for adequate funding for a number of Special Operations, including repatriations in Africa, programmes in the Commonwealth of Independent States (CIS) countries and operations in former Yugoslavia. He urged donors to assure a reasonably stable funding base, in order to permit the High Commissioner to deal with the challenges and problems at hand.

6. Delegations made statements and posed questions on a number of specific operations, including the Great Lakes region of Africa, former Yugoslavia and Ethiopia. The priority that should be accorded to the funding of General Programmes was underlined by several delegations. The same delegations stressed the need to broaden UNHCR's donor base. One delegation asked that more information be given on the uses made of the various allocations under the Voluntary Repatriation Fund and the Programme Reserve. A question was asked about any possible relationship in the predicted shortfall in the funding of General Programmes and the funding of Special Programmes. One delegation expressed the wish that the documentation be more up to date.

7. The Director of DOS and the Head of FDRS responded to the various interventions. Problems and progress to-date in relation to the expansion of UNHCR's donor base were outlined and it was noted that the High Commissioner intended to visit a number of potential donors during the course of the year. The present problem of funding General Programmes was considered a separate issue to that of funding Special Programmes. It was explained that UNHCR has consistently had funding problems with Special Programmes over the last four years, both as to the quantity as well as the timing of contributions. This year, delegations were informed, is the first year since 1993 that funding of the General Programmes would seem to be a problem. As regards more up to date information, it was proposed that the oral updates traditionally provided by the Secretariat at meetings would be made available on the day of the Standing Committee in an information sheet. UNHCR undertook to look at providing more information on the uses made of the allocations made under the Voluntary Repatriation Fund and the Programme Reserve.

8. The Standing Committee adopted the related Decision on Programme and Funding (Annex).

IV. SITUATIONS REPORTS

9. The Standing Committee had two regional reviews to consider under this agenda item: an *Update on Regional Developments in Europe* (EC/47/SC/CRP.17, Corr.1 and Corr.2), and an *Update on Regional Developments in the former Yugoslavia* (EC/47/SC/CRP.18). An oral report was also provided by the Chairman of the Executive Committee on his recent mission to Mexico and Guatemala.

A. Regional developments in Europe

10. Introducing the regional review of Europe, the Director of Operations for Europe began by emphasizing that in Western Europe, UNHCR's main activity remained the monitoring of the harmonization process of asylum and refugee policies by member States of the European Union. UNHCR's efforts within the framework of the revision of the European Union treaty to promote the universality of the application of the 1951 Convention were mentioned by the Director, as well as current efforts to define a policy for possible involvement with the return of persons not in need of international protection. Delegations expressed support for this initiative. In addition, delegations expressed support for UNHCR's reorientation in Europe and expansion into the CIS and Baltic countries. Delegations requested to retain this issue on the agenda for further discussions. Support was also voiced by delegations for the balanced references made to the need to safeguard asylum while also ensuring border controls. Delegations requested that future Standing Committee reports include the number of resettlement places offered by resettlement countries. One delegation requested further information on UNHCR's planned efforts to promote inter-regional cooperation within the Nordic region. A hope was expressed that following Lithuania's and Estonia's accession to the 1951 Convention, the Government of Latvia would also accede to the Convention.

11. The Director stated that in Central Europe, UNHCR will endeavour to create opportunities which would facilitate the integration of refugees and allow them to enter into the social and economic structures of host countries. A brief overview was then given by the Director on the situation in Albania, from where more then 31,000 persons had left for Italy and Greece since March 1997. The Director commented, however, that the presence of a Multinational Protection Force was expected to contribute towards stability in Albania. Delegations expressed their appreciation for the close cooperation between the Italian Government and UNHCR in trying to resolve this crisis.

12. The Director also reviewed the process and outcome of the CIS Conference, mentioning the variety of assistance programmes that emerged from the Conference and elaborating on the follow-up process. Concern was expressed by one delegation with regard to the modest donor response to an appeal issued in November 1996, which might adversely affect the implementation of the CIS Programme of Action. Further, a wider distribution of the CIS Programme of Action was recommended by a delegation. Delegations, however, also expressed support for the follow-up programme and indicated a willingness to contribute to certain activities. A brief description of the security situation in the Northern Caucasus and political developments in the Caucasus region was also provided by the Director, yielding support from a number of delegations for UNHCR's activities in this region.

13. Delegations also voiced support for UNHCR's decision to close the Atroush camp in northern Iraq. One delegation, however, expressed concern over UNHCR's objective to promote the lifting of its Government's policy to maintain the

geographical reservation, stating that this was a necessary and pragmatic approach of its Government to ensure the protection of asylum seekers. The delegation also provided a clarification and elaboration on an immigration regulation referred to in the paper. Further, the delegation requested that "Kurdish Turks" to be referred to as "Turkish citizens of Kurdish ethnic origin".

B. Regional developments in the former Yugoslavia

14. The UNHCR Special Envoy for Operations in the former Yugoslavia introduced this item, recalling the meeting of the Humanitarian Issues Working Group (HIWG) of the Peace Implementation Council, held in Geneva on 23 April 1997, and offered a summary of the developments reviewed at that meeting. He informed delegations that almost all of the estimated 250,000 persons involved in repatriation and return movements in Bosnia and Herzegovina in 1996 (160,000 displaced persons, 90,000 refugees) opted to return to so-called "majority" areas. UNHCR, he went on to explain, expects an additional 200,000 refugees from Bosnia and Herzegovina to repatriate to majority areas in 1997. The Special Envoy also informed delegations that UNHCR's most difficult challenge and first priority will be to encourage repatriation and return to minority areas, through a series of confidence-building measures. The Open Cities initiative, he explained, is intended to introduce "positive conditionality", increasing assistance to municipalities and areas willing to encourage the return of minorities. Should there be no progress towards minority returns, the Special Envoy warned that UNHCR would have no choice but to proceed with a full re-assessment of its assistance programme. He informed delegations that UNHCR will continue to cooperate closely with the Supervisor on returns to Brcko. The Special Envoy then outlined a second major objective in 1997, which was to ensure the sustainability of return movements from abroad by active cooperation within the Return and Reconstruction Task Force (RRTF), continued efforts to encourage the creation of a soft-loan facility for shelter and income-generation activities, such as the successful Bosnian Women's Initiative.

15. The Special Envoy informed the Committee that, in the region of the former Yugoslavia, UNHCR's objective remains the promotion of solutions, which could principally take the form of voluntary repatriation and local integration. Further, the Special Envoy stated that in Croatia, UNHCR was encouraged by the signing on 23 April 1997 of the "Agreement on the Operation Procedures of Return" by a Joint Working Group comprising the Government of Croatia, the United Nations Transitional Authority for Eastern Slavonia, Baranja and Western Sirmium (UNTAES) and UNHCR, which defines the guiding principles, as well as specific mechanisms, for a two-way programme of returns to and from Eastern Slavonia, based on equal access and equal treatment for all Croatian citizens without distinction. The Special Envoy expressed hope that significant return movements of minorities from Eastern Slavonia can now be initiated, and perhaps serve as a model for returns from the Federal Republic of Yugoslavia. The Special Envoy informed delegations that UNHCR welcomed the Federal Republic of Yugoslavia's decision to create a "Council" charged with developing a national policy regarding refugees, which should help to advance the process of regional consultations initiated last year by UNHCR. In this regard, the Special Envoy explained that humanitarian needs remain a high priority. He went on to explain that many refugees have expressed their wish to remain and settle in the Federal Republic of Yugoslavia, but will require support far beyond that which UNHCR can provide with limited self-reliance projects. In Slovenia and the Former Yugoslav Republic of Macedonia, the Special Envoy indicated that good progress has been made towards durable solutions. Further, he stated that UNHCR is also making progress towards field-based management of the Operation in the former Yugoslavia in implementing

Project Delphi. He informed delegations that a reduced total field establishment has absorbed some of the functions previously performed at Headquarters, accounting for a savings of ten posts in Geneva, despite a projected reduction of 100 posts in the field.

16. Many delegations referred to the 23 April 1997 HIWG meeting and reiterated their support for UNHCR's plan for repatriation to and return in Bosnia and Herzegovina. Strong support was also stated for UNHCR's Open Cities initiative as a means to encourage minority repatriation and return movements. One delegation warned, however, that the initiative should be viewed with caution and that the stated policy of favouring majority movements in 1997 could place a disproportionate burden on the Federation of Bosnia and Herzegovina. Many delegations insisted that limitations on minority return movements and freedom of movement, particularly by the Republika Srpska, were contrary to the letter and spirit of the Dayton Agreement and could not be countenanced. Two delegations voiced favour for conditioning international assistance on full compliance with the Dayton Agreement. One delegation asked UNHCR to review its implementing arrangements in Republika Srpska, given the authorities' continued resistance to accept the return of minorities. One delegation regretted that EC/47/SC/CRP.17 did not present a full picture of the situation of refugees from Bosnia and Herzegovina in its country and of the substantial strides made in achieving durable solutions for them. Another delegation reiterated its desire to accede to the Quintpartite Agreement on transit. Referring to developments in Croatia, a number of delegations welcomed agreement on mechanisms for return devised in cooperation with the Government of Croatia and UNTAES. One delegation drew attention to the situation of ethnic Hungarian minorities amongst displaced persons and refugees in Croatia and the Federal Republic of Yugoslavia, and informed the meeting of its close cooperation with the Croatian authorities to secure their safe and dignified return.

17. The Special Envoy thanked delegations for their support of UNHCR planning, objectives and strategy in Bosnia and Herzegovina. He noted the persistent calls made by many delegations for minority return movements, both in Bosnia and Herzegovina and Croatia, and agreed with those delegations who had emphasized the importance of securing respect for freedom of movement and the right to return to home areas. In response to comments on positive developments in Croatia, the Special Envoy cautioned that any optimism must be tempered and weighed against concrete implementation of the agreement reached in tripartite discussions. The Special Envoy welcomed the stated support for "positive conditionality" espoused by UNHCR through its Open Cities initiative and echoed the disappointment of many delegations at the lack of concrete proposals regarding minority movements by the Republika Srpska. The Special Envoy took note of the reservation expressed by one delegation regarding implementation of UNHCR's programmes through authorities who fail to honour the commitments set out in the Dayton Agreement. Finally, the Special Envoy recognized the important role of the Quintpartite Agreement on Transit in facilitating repatriation movements and recalled that amongst the recommendations made by UNHCR in its plan for 1997 was one to widen the agreement to other interested States.

C. Report of the Chairman on his mission to Mexico and Guatemala

18. An oral report was then delivered by the Chairman on his 20 - 28 February 1997 mission to Mexico and Guatemala. In defining the purpose of his mission, the Chairman expressed his personal desire to witness, first hand, the positive developments in respect to Guatemalan refugees and to attempt to identify elements that might be helpful in resolving similar situations in other parts of

the world. The Chairman outlined his discussions with various officials in both countries and described his visits to refugee settlements and return areas. Further, he highlighted several elements which were essential in finding resolution to the refugee situation in these countries. These included the need to address root causes of the refugee problem in order to achieve durable solutions, emphasis on raising socio-economic standards in areas of return and enhanced efforts to address issues of gender to achieve sustainable integration. In conclusion, the Chairman commended the respective Governments on their willingness to cooperate and bring resolution to this refugee situation. Delegations representing countries visited on the mission then thanked the Chairman for his interest in the programme and indicated that progress towards a definitive resolution of this refugee situation would continue.

V. PROGRESS REPORT ON REFUGEE CHILDREN AND ADOLESCENTS, INCLUDING UNHCR'S STRATEGY FOR FOLLOW-UP TO THE REPORT ON THE IMPACT OF ARMED CONFLICT ON CHILDREN

19. The Senior Coordinator for Refugee Children presented an update of UNHCR's efforts to implement its policy and guidelines for refugee children and adolescents, as well as the Office's follow-up strategy to the United Nations study on the Impact of Armed Conflict on Children (A/51/306), hereafter referred to as the Machel study. He highlighted the "invisibility" of refugee children and adolescents, and indicated that this "invisibility" is the result of a structural problem that affects all aspects of policy making and operations. He went on to inform delegations this is despite the fact that children actually make up 52 per cent of the persons assisted by UNHCR and in spite of the "special care and assistance" mandated by the Convention of the Rights of the Child (CRC) and the UNHCR Policy on Refugee Children. The Senior Coordinator outlined several factors contributing to this problem, including the tendency to view refugees as a uniform group, the portrayal of young people only as dependents of adults and the particular "invisibility" of adolescents. He expressed his hope that the results of a global evaluation of programming for children and adolescents, initiated by UNHCR in partnership with the International Save the Children Alliance, would provide a common vision for constructive improvement to programming in the years to come.

20. The Senior Coordinator then presented UNHCR's strategy of response to the Machel study, a rights-based, goal-oriented, and child and adolescent-specific agenda within all phases of UNHCR operations. According to the Senior Coordinator, essential to this strategy is the establishment of performance objectives and the steps by which these objectives will be achieved. He informed delegations that increasing the number of community service officers in the field, the creation of regional senior advisory posts to ensure that programming is coordinated and responsive to children's and adolescents' needs, the development of a comprehensive training programme on child-adolescent rights and developmental needs, the inclusion of a line item for "rapid education" in future emergency budgets and the creation of a trust fund to strategically reorient UNHCR programming for children and adolescents are all necessary steps that need to be taken to implement this strategy. Further, the Senior Coordinator noted that continued international advocacy in the areas of conscription limitations, humanitarian codes of conduct and bans on landmines are also necessary to ensure the protection of children and adolescents.

21. Delegations strongly endorsed both the progress report and the follow-up strategy to the Machel study, and requested monitoring and reporting on these matters to the Executive Committee. Further, they requested that the results of

the evaluation of UNHCR programming for children and adolescents be made available to the Executive Committee. Several delegations recognized the need to focus on children and adolescents and bring them into the mainstream of UNHCR programming. A number of delegations commented on the need to address not only problems related to conscription and sexual abuse of children and adolescents, but also to larger questions, such as physical protection, trafficking and commercial exploitation, counteracting gender bias with regard to access to education, conflict resolution education, and health and nutrition. With regard to conscription, the need for a flexible definition of "voluntariness" of enlistment for youth was mentioned, as was the possibility of replicating successful projects to separate boys from military components in refugee camps. One delegation expressed its Government's reservations about the appropriateness of UNHCR's support of the ban on military recruitment of anyone under 18 years of age, stating that this was an issue still being debated in various United Nations fora.

22. Special reference was made to the needs of girls and young women, particularly those who have been victims of sexual and other violence. One delegation stressed the need for reproductive health programmes and related education to take into account not only cultural values, but also religious and ethical values. In addition, in relation to the availability of means in the area of reproductive health, taking into account the respect for the aforementioned values, delegations suggested that maximum discretion should be left to agencies, individuals, families and groups in determining the use of those means.

23. In response to questions about UNHCR's capacity to address the large scope of problems identified, the Director of DOS and the Senior Coordinator provided information on agreements signed with UNICEF, WFP and WHO and stressed that UNHCR will collaborate closely with these agencies, as well as with NGOs in the field. They explained that the trust fund was needed to implement punctual activities, while a heightened awareness of these issues is being mainstreamed into UNHCR's general programming. In response to queries about successful projects for children and adolescents, they reiterated that attempts will be made to identify best practices for replication in other countries. They also noted that in finalizing UNHCR's strategy in response to the Machel study, explicit reference would be made to respect for cultural, ethical and religious values in the areas of reproductive health and related education.

VI. FOLLOW-UP TO ECOSOC RESOLUTION 1995/56

24. This was the final consideration of this item, which had been on the Standing Committee's agenda since 1996. Oral updates were given by Mr. Philippe Boullé of the Department of Humanitarian Affairs (DHA) and the Secretary of the Standing Committee on behalf of UNHCR.

25. Mr. Boullé reported on the progress of the inter-agency process to produce a draft of the Secretary-General's report to ECOSOC, in particular the discussions at the Inter-Agency Standing Committee Working Group's (IASC-WG) meeting of 21 and 22 April 1997 in New York. Mr. Boullé informed delegations that the discussions of the IASC-WG highlighted the issue of the relationship between the IASC, the Emergency Relief Coordinator (ERC) and DHA. In this regard, concern was expressed about DHA's operationality. The IASC-WG agreed to examine, in future sessions, DHA's role in natural disasters, field coordination mechanisms, information systems, mine action, demobilization and reintegration. The IASC-WG supported the view that DHA should not be operational, as this would

weaken its role as an impartial coordinator. Mr. Boullé also informed delegations that the recommendations in the draft report to ECOSOC did not propose new structures, but rather emphasized the strengthening of those already existing. Its core recommendation, with regard to coordination, called for a unitary field structure based on the resident coordinator system.

26. In his capacity as Head of UNHCR's Inter-Organization Affairs and Secretariat Service, the Secretary recalled the deliberations of the Standing Committee on this item, culminating in a wide-ranging conclusion by the Executive Committee in October 1996 (A/AC.96/878, para. 24). He welcomed the regular briefings to the Standing Committee by DHA on the inter-agency process, in which UNHCR has been actively involved. The Secretary praised the progress made on many issues through the framework of the IASC and its Working Group, but noted that there were still areas that needed further attention. These include the protection needs of internally displaced persons; the need to ensure that the extension of the Consolidated Appeals Process in the areas of rehabilitation and development does not delay the issuing of appeals; and the importance of ensuring that the discussion of the interface between relief and development includes the issue of capacities and not only at that of coordination. He expressed UNHCR's reservations about the unitary coordination model in the conclusions of the IASC review. He elaborated that UNHCR believes that a menu of options should be available to the Secretary-General and the ERC for coordinating response to complex emergencies, including that of the lead agency. In this regard, he urged that the Great Lakes experience be fully evaluated. Finally, he called for greater clarity in the inter-relationship of the ERC, DHA and the IASC.

27. A number of delegations recalled that options had been called for by resolution 1995/56. Delegations asked for clarification between the roles of the IASC and of the newly created Executive Committee on Humanitarian Affairs (ECHA). In doing so, a number of delegations stressed that they understood the IASC to be the primary body for humanitarian coordination and favoured its strengthening. Several delegations strongly supported the need for a comprehensive examination of the experience in the Great Lakes region, with a focus on coordination arrangements. One delegation asked in what sense "conflict of interest" could occur in the Resident Coordinator model.

28. The Chairman then invited Mr. Martin Griffiths, Director of DHA, to join the discussion. Mr. Griffiths explained that a task force would be looking at the relationship between the ECHA and the IASC, and that he understood that the IASC would remain the primary forum for humanitarian policy development. He went on to explain that the ECHA may evolve into a forum where decisions on strategic coordination might be taken.

29. The Secretary offered clarification on UNHCR's position, stating that one of the reasons UNHCR favoured including the lead agency option on a menu of options was that often, in complex emergencies, problems were of a cross-border nature, and that issues of *refoulement* and the reasons for flight had to be addressed. Resident Coordinators he explained, by definition, were country specific and, understandably, gave priority to national development issues.

VII. REPORTS RELATING TO OVERSIGHT[1]

30. Under this agenda item, the Standing Committee had before it the *Follow-up to Audit Recommendations on Programme and Financial Issues and the Integrated*

[1] Agenda items VII and VIII were considered in reverse order.

Management Information System (EC/47/SC/CRP.20). In addition, three reports, forwarded from the sixth meeting of the Standing Committee, were before the Standing Committee for consideration: *Internal Audit* (EC/47/SC/CRP.10), *Lessons Learnt from the Burundi and Rwanda Emergencies: Conclusion of an Internal Review Process* (EC/47/SC/CRP.11), and *UNHCR's Evaluation Activities for 1997* (EC/47/SC/CRP.12).

31. The Controller and Director of the Division of Financial and Information Services introduced the first of these papers, the *Follow-up to Audit Recommendations on Programme and Financial Issues and the Integrated Management Information System*. Delegations posed several questions, mainly with regard to the preparation of work plans, the means of selecting beneficiaries for projects, and in respect to the evaluation of programme achievements and outputs. The Director of DOS responded to these queries and agreed with the need to improve criteria for the selection of beneficiaries and the need to obtain good information on potential beneficiary populations. Further, he indicated that the evaluations referred to in the paper were not limited to self evaluation.

32. The Deputy High Commissioner introduced the paper on internal audit, explaining that the average audit cycle was for 3 years, differing with the type of operation. Further, he informed delegations that staffing and support for this function of UNHCR were being strengthened. Delegations indicated their continued support for this function and emphasized the importance of the internal audit.

33. The Director of the Inspection and Evaluation Service introduced *Lessons Learnt from the Burundi and Rwanda Emergencies: Conclusions of an Internal Review Process*. Delegations welcomed the paper and UNHCR's openness in bringing to light issues which needed attention. Several delegations called for an examination of the weaknesses in the managerial, coordination and protection aspects of UNHCR's response to the emergency, and requested further clarification of the relationship between the Regional Bureau and DOS.

34. Several delegations urged UNHCR to implement the protection-related recommendations made in the evaluation as a matter of urgency and requested further information on action taken to address them. One delegation emphasized the necessity for a well-defined policy and strong protection presence in the field, and called on UNHCR to develop workable and wide-ranging cooperation with NGOs and donors. Another delegation suggested that UNHCR should draw on the experiences of other international and bilateral agencies in the context of emergency capacity and conflict prevention. A delegation also suggested that host Governments and the international community should share the responsibility with UNHCR for separating refugees in camps from individuals who have committed atrocities. Other points voiced by delegations included the need for improved logistics and statistics, a better understanding of the social, cultural and political background of refugees, and stronger links between UNHCR and human rights field operations. One delegation asked how many of the lessons learnt had been applied in eastern Zaire.

35. In response to delegations comments and queries, the Director, with reference to refugee statistics, acknowledged that there had to be a balance between responding to the emergency needs in case of mass influx, and refugee registration. With regard to needs assessment, the Director stated that this assessment had been carried out, in particular, with WFP and the early

involvement of technical staff. Regarding joint evaluations, the Director pointed out that there was constant participation by UNHCR in the OECD/DAC[2] study.

36. Following this, the Director's introduced *UNHCR's Evaluation Activities for 1997*. Several delegations felt there should be consultation with the Standing Committee before the programme of evaluation was finalized and asked what criteria were used for the selection of evaluation topics. Delegations also asked about the selection of subjects included in the 1997 evaluation programme and a request was made to review the programme. Another delegation suggested that the topics for evaluation in 1998 should be shared with the Standing Committee prior to their final selection.

37. Several speakers wanted a wider dissemination of evaluation reports, especially to the Standing Committee and NGOs. One delegation, commenting on the somewhat reduced evaluation programme, asked if fewer resources were being devoted to evaluations than previously allocated, urging UNHCR to ensure that the Delphi process led to a strengthening of the Inspection and Evaluation Service. The same delegation looked forward to receiving more evaluation studies. Another delegation requested that a stronger focus be placed on self-evaluations within UNHCR and that a distinction should be made between policy analysis, analytical studies and evaluation.

38. In reply, the Director stated that before the year's evaluation programme was finalized, Directors of Bureaux and Divisions were consulted and a final decision was made by the Senior Management Committee, taking care to avoid duplication with other Divisions. Further, the Director stated that he would encourage self-evaluation by field offices and other services within Headquarters, and would assist with technical input. With regard to the dissemination of evaluation reports, the Director informed delegations that various options were being considered, bearing in mind the necessities of informing the Standing Committee and using the evaluation as an internal management tool.

VIII. GOVERNANCE ISSUES

39. The Standing Committee reviewed two issues under this item; preliminary consideration of the Annual Theme for the forty-eighth session of the Executive Committee; and a *Progress Report on the Informal Consultations on Non-Governmental Organization (NGO) Observer Participation in the Work of the Executive Committee of the High Commissioner's Programme and its Standing Committee* (EC/47/SC/CRP.21).

40. The Chairman, in introducing discussions on preliminary consideration of the annual theme for the forty-eighth session of the Executive Committee, reminded delegations that new working methods of the Executive Committee replace the general debate with a debate focused on an annual theme. Further, the Chairman recalled that the June 1996 meeting of the Standing Committee asked that the selection of the topic for the annual theme take place in two stages. The Chairman then called upon the Secretary to inform delegations of discussions within UNHCR on a possible topic for the annual theme.

41. The Secretary recalled that the annual theme for the forty-seventh session of the Executive Committee had been "The Pursuit and Implementation of Durable

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[2] Development Assistance Committee of OECD.

Solutions", and informed delegations that following consultations within UNHCR, it was recommended that the theme "Repatriation Challenges" be put forward to the Standing Committee for consideration. This theme was suggested, the Secretary explained, since it had a logical connection with the previous year's theme and was directly related to a number of critical issues and dilemmas facing the Office.

42. Several delegations voiced support for the proposed theme and expressed readiness to adopt it immediately. While some delegations suggested that there needed to be a clearer focus within this theme, others cautioned against narrowing the debate. Yet another delegation suggested that alternative themes might be proposed for consideration by the Standing Committee. One delegation proposed that follow-up action to last year's theme could be the subject of a future debate. It was agreed that the Standing Committee would, as foreseen, return to the issue and take a decision at its June meeting.

43. The Chairman then turned delegations' attention to the issue of informal consultations on NGO participation in the Executive Committee and its Standing Committee. In highlighting progress achieved so far during the four rounds of informal consultations, the Chairman expressed his hope that a final proposal for enhanced NGO participation in the Standing Committee would be ready for consideration by the Standing Committee during its meeting in June. In this regard, the Chairman informed delegations that a preliminary proposal (SC/IC/NGO/7) was already being considered in the consultations, which he hoped would lead to a consensus on this issue. The main outstanding subject of debate, the Chairman explained, was the question of how actual NGO attendance at Standing Committee meetings would be regulated.

44. Since delegations were still engaged in informal consultations on this issue, the Chairman did not think it was appropriate to open up a parallel debate in the Standing Committee.

IX. MANAGEMENT AND FINANCIAL ISSUES

45. Under this agenda item, the Standing Committee considered and *Information Note on Income and Expenditure for the Year 1996* (EC/47/SC/CRP.22) and two papers, one forwarded from the sixth meeting of the Standing Committee, both entitled an *Update on Project Delphi* (EC/47/SC/CRP.13 and EC/47/SC/CRP.23).

46. The Deputy High Commissioner provided introductory remarks on the status of Project Delphi, describing the Implementation Plan as an ambitious one, which would still require fine-tuning, particularly in terms of the timelines, the linkages between the various projects to be undertaken and a more detailed assessment of the financial implications. He added that plans had now taken shape that were leading to focused action. Further, he reported that since the Plan had been issued, meetings had been scheduled with senior managers and their staff to review the arrangements for implementation and achievements to-date.

47. The Deputy High Commissioner explained that, while difficulties were being encountered, these were expected and that overall, Project Delphi was moving forward. He then briefly referred to progress achieved so far under several important activities: the design of the Operations Management System (OMS); post reductions at Headquarters; the creation of a global supply chain; the development of a new integrated budget and finance system; the transfer of most administrative and management functions related to local staff to the field; a training strategy for UNHCR staff and implementing partners; the strengthening of

internal oversight mechanisms; and the establishment of an Information and Communications Systems Strategy. A workshop would also start on 2 May in Nairobi for staff of the Great Lakes region, to review the relevance of on-going change activities for this operation and to receive initial feedback on the proposed core elements of OMS.

48. A number of representatives then took the floor. One delegation voiced appreciation for the fact that the additional costs envisaged under Project Delphi could be absorbed within the current 1997 budgets and welcomed the proposed post reductions at Headquarters. Another delegation enquired how far the decentralization process had advanced as far as the operation in the Great Lakes was concerned and underlined his delegations hope that the protection principles would continue to be the basis of UNHCR's work, irrespective of the change process. Several delegations were also interested to know what effect the recruitment freeze introduced by UNHCR would have on the Junior Professional Officers (JPOs) programme and voiced concern that developing countries were under-represented in this programme. A delegation also encouraged UNHCR to provide staff with as much stability as possible regarding their career development and underlined the importance of retaining experienced staff while implementing the downsizing process. This delegation also expressed its hope that UNHCR would not discontinue external recruitment completely and commented that external recruitment was a useful way of bringing new ideas and approaches into the organization.

49. The Deputy High Commissioner thanked the delegations for their comments and encouragement to proceed with the change process. Responding to the question in relation to decentralization, he explained that the Director of Operations for Southern Africa was now based in the field and more authority had also been delegated to the former Yugoslavia Operation. Further, he informed delegations that increased decentralization for the Great Lakes operation had been discussed, but the constantly changing situation on the ground had delayed implementation. He gave delegations every assurance that protection remained at the forefront in the minds of those managing the change process, commenting that Project Delphi is aimed at strengthening protection and not weakening it.

50. The Director of the Division for Human Resources Management (DHRM), responding to comments made by delegations, explained that while some limited external recruitment would continue, in-house resources would be considered first. In this context, she added that female JPOs were considered as internal candidates and male JPOs as priority external candidates. Further, the Director informed delegations that the JPO programme was financed by donors, some of whom also helped to fund JPOs from developing countries. She added that countries which were not currently participating in the programme should consider doing so, as this was not an expensive undertaking. On downsizing, she explained that UNHCR would make every effort to retain experienced staff. In this respect, she informed delegations that there were currently more professional posts vacant in the field than professional posts due for discontinuation at Headquarters. Therefore, she explained, suitably qualified general service staff would be given the possibility to apply for posts in the professional category. Finally, she recognized the difficulty of promoting career development in a time of dramatic change, adding that UNHCR was not the only organization facing this problem. She then made reference to plans to implement the Career Management System (CMS), whereby the competency and career development-based performance appraisal system should enable staff members to manage their careers more effectively and equip them better to face future challenges.

51. The Director of the Division of International Protection (DIP), responding to one delegation's comment, reaffirmed that the protection principles remained the basis of UNHCR's activities. In this regard, the Division of International Protection was represented in the OMS Project Team, a protection database would be established and a major protection training exercise was underway. He also informed delegations that further guidelines for field operations on protection were being elaborated in light of the decentralization envisaged under Project Delphi.

52. In concluding this item of the agenda, the members of the Standing Committee adopted the draft decision on the Implementation Plan for Project Delphi without revision (Annex).

X. ANY OTHER BUSINESS

53. An information note entitled *Under-Utilization of Conference-Servicing Resources: Request for Information for a General Assembly Report*, was presented to the Standing Committee for consideration, following a letter received from the Chairman of the Committee on Conferences drawing attention to the under-utilization of conference facilities reserved for the Executive Committee. It was agreed that the Chairman of the Executive Committee would write to the Chairman of the Committee on Conferences, drawing attention to the fact that, with one exception, the Executive Committee and Standing Committee have met the established benchmark of 80 per cent utilization of the services reserved for them, and informing him that additional efforts will be made, notably in terms of starting meetings on time. It was further agreed that the Standing Committee would keep the matter under review.

54. There being no further business, the Chairman adjourned the meeting.

DECISIONS ADOPTED BY THE STANDING COMMITTEE

I. DECISION ON THE SOCIAL AND ECONOMIC IMPACT OF LARGE REFUGEE POPULATIONS ON HOST DEVELOPING COUNTRIES

The Standing Committee,

Noting with concern the impact of large refugee populations on countries of asylum, in particular developing countries with limited resources,

(a) Urges UNHCR, in a manner consistent with its mandate, to develop operational strategies to mitigate such impacts, and to help offset the negative effects of large-scale refugee presence through appropriately conceived refugee aid programmes and projects undertaken with the support of host Governments, development and financial institutions and the donor community; in addition calls on UNHCR to exercise a catalytic role in relation to addressing longer-term rehabilitation needs;

(b) Urges the member States of the Executive Committee to ensure that refugee and returnee rehabilitation and reintegration initiatives feature in multilateral and bilateral development programmes in both host countries and countries of origin and that these initiatives are linked in a timely fashion with broader development ventures aimed at post-emergency rehabilitation and recovery.

II. DECISION ON PROGRAMME AND FUNDING PROJECTIONS

The Standing Committee,

Recalling the decision of the forty-seventh session of the Executive Committee on programme, administrative and financial matters,

(a) Notes that the overall needs for 1997, based on currently known or anticipated requirements, now amount to $1,218.4 million, of which projected needs for General Programmes remain at $ 452.6 million, as approved by the Executive Committee at its forty-seventh session, and those for Special Programmes are $ 741.8 million, of which $ 289.7 are for voluntary repatriation, while the remaining $ 24 million pertain to the United Nations Regular Budget;

(b) Notes also the uses made of the Emergency Fund, the Programme Reserve and Voluntary Repatriation Fund in accordance with their governing criteria;

(c) Acknowledges the High Commissioner's appeal to donors for an early announcement of contributions to permit timely implementation of programmes.

III. DECISION ON THE IMPLEMENTATION PLAN FOR PROJECT DELPHI

The Standing Committee,

Welcoming the issuance of the Delphi Implementation Plan and noting that the additional costs envisaged in 1997 can be absorbed within current budget provisions,

(a) Requests the High Commissioner to provide the usual detailed budgetary breakdown in the documentation to be submitted to the forty-eighth session of the Executive Committee;

(b) Asks to be kept informed at its future meetings of progress achieved in the implementation of Project Delphi.

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EXECUTIVE COMMITTEE OF THE
HIGH COMMISSIONER'S PROGRAMME

Forty-eighth session

NOTE ON INTERNATIONAL PROTECTION[1] *

I. INTRODUCTION

1. For several years, the characteristics of refugee flows worldwide have been changing. Contemporary refugee flows are characterized by flight from war and human rights abuses, that often amount to persecution; the very objective of some civil conflicts is the forcible expulsion of targeted populations. This type of violence, which has beset several regions in the 1990s, has caused particular dilemmas for refugee protection. The traditional role of the nation-state in war, as in persecution, is increasingly shared with armed factions, criminal gangs, and even private forces. The resulting mass displacements have included civilians, fighters and persons active or complicit in genocide. Separating out those who have no claim to international protection, and whose presence and actions may incite fresh violence has proven beyond the capacity of the international community, even over time. These are among the complex circumstances which have contributed to placing asylum, and international law, under severe pressure.

2. Often, persons fearing for their lives or liberty flee alongside those leaving poverty and grinding hardship. Composite flows, while neither a new phenomenon nor restricted to situations of war and civil strife, complicate the task of ensuring international protection, particularly when the flows are massive. Even in the case of small-scale population flows, the failure to differentiate between persons in need of protection and others, including criminals evading justice, can create a harsh and unreceptive climate for

[1] Drawing on significant developments in 1996 in the field of international protection of refugees, this Note reviews the institution of asylum, in particular, the grant of asylum as a peaceful act, admission and *non-refoulement*, the civilian character of refugee camps, and the physical safety of asylum-seekers, refugees, returnees and others of concern. Reviewing asylum as a network of rights and duties, the Note considers how it responds to contemporary protection needs, and how it can be strengthened.

* This document was submitted to the third meeting of the Standing Committee Committee (24-26 June 1997) under the symbol EC/47/SC/CRP.26.

protection. UNHCR's efforts are directed towards strengthening international commitments to receive refugees and to bring about solutions, and, as part of these efforts, to secure proper application of the exclusion and cessation clauses of the international refugee instruments. There is also an increased interest in resettlement as an essential instrument of protection and as a durable solution.

3. 1997 marks thirty years since the 1967 Protocol made the refugee protection regime universal by removing geographic and temporal restrictions, and since the Declaration on Territorial Asylum sought to give greater content to the individual right to seek and to enjoy in other countries asylum from persecution. During this period, international instruments and state practice have affirmed that a broad range of persons is entitled to international protection, on grounds which frequently overlap, including conflict, events seriously disturbing public order and serious human rights abuses. Notwithstanding a number of positive developments, however, the possibilities for obtaining international protection continue to be diminished as refugees and asylum-seekers face border closures, armed violence, interdiction at sea, expulsions, and legal restrictions as well as premature return to an insecure environment.

4. As in previous years, refugees and asylum-seekers have continued to find refuge in many parts of the world. Most States parties to the international refugee protection instruments have complied with the spirit and letter of those treaties in extending international protection to persons unable or unwilling to return home due to fear for their lives or liberty. A number of States also responded to the protection needs of individual refugees by providing generous resettlement opportunities. The general observance by States - whether parties to international instruments or not - of core protection principles, and the good working relationship UNHCR has continued to enjoy with most States over the past year, underscored the soundness of the international refugee protection regime. During the past year, three States also acceded to the 1951 Convention or 1967 Protocol, bringing to 134 the number of States parties to one or both of these instruments. A further three acceded to the international instruments for the prevention and reduction of statelessness. Where breaches of these instruments occurred, however, they often created severe protection problems for refugee or asylum-seeking individuals, as well as undermining the international protection framework, which is sustained through the demonstrated adherence of States.

5. Developments in the past year have illustrated yet again that the grant of asylum may place unduly heavy burdens on certain countries, as foreseen by the Preamble to the 1951 Convention. A number of current refugee situations illustrate both this burden and the absence of any satisfactory alternatives to asylum. These situations demonstrate acutely the need for sustained international commitment and support to refugee-hosting States.

6. This commitment must also be linked to increased international support for the institution of asylum, and for identifying solutions, if the High Commissioner is to exercise her mandated protection functions of securing the fundamental rights of refugees, asylum-seekers and others in need of international protection; playing a supervisory and standard-setting role in developing international refugee law; and identifying and helping to implement fair and sustainable solutions. As far as host States are concerned, the Executive Committee of the High Commissioner's Programme has frequently expressed concern over the impact of large refugee populations on countries of asylum, in particular developing countries with limited resources, and has encouraged other

States to make refugee and returnee needs a component of their multilateral and bilateral development programmes. Insufficient attention to the economic, social and environmental implications of hosting large numbers of refugees undoubtedly plays a significant role in weakening the willingness of States to continue to extend asylum in a generous manner.

7. The past year has seen numerous incidents of *refoulement*, and serious abuses of refugee rights. Refugees and asylum-seekers have been expelled, in some cases even after their acceptance for resettlement in third countries; rejected at borders; interdicted on the high seas and otherwise involuntarily returned, whether through armed force or pursuant to bilateral agreements between States. As a result, refugees and asylum-seekers have been exposed to grave, and in some cases life-threatening, danger. Men, women and children trying to flee their country, or return to it, have been killed outright, kidnapped, or subjected to sexual violence. Asylum-seekers and refugees, crossing borders sown with anti-personnel mines, embarking on treacherous journeys by sea, encountering banditry, or finding themselves caught up in a burgeoning war, also face heightened threats to their physical security. In recent months, refugee camps and settlements have been subject to forced relocation, as have returnees and internally displaced persons; major human rights violations have occurred in the course of these forced relocations and camps and settlements have been razed in organized attacks. In some cases, refugees have been denied basic food and medical care. Women continue to face particular dangers, and abuses of the rights of children through military attack or recruitment, even within refugee camps, has not been eliminated.

8. In the Great Lakes region of Central Africa in particular, asylum-seekers, refugees, returnees, stateless persons, internally displaced and vulnerable populations have all suffered acute and shocking failures of protection, often on a massive scale. Continued denial of access, the absence of necessary cooperation by local authorities and limited political support meant that refugees' health and safety were seriously jeopardized, and also that those in need of protection were not identified and separated from others. In the former Yugoslavia, the intimidation of returnees, volatile discord over land and property ownership or occupation, nationality disputes and summary returns may threaten fragile social and political stability.

9. Despite these acute operational difficulties, a number of positive developments in the international legal framework should be noted. At the national, regional and international levels, judicial human rights bodies continued to develop the legal framework of refugee protection, further defining the scope of obligations towards asylum-seekers and adding content to the rule of *non-refoulement*, also in respect of persons facing a substantial risk of torture. National and international courts gave increased recognition to the particular forms of persecution faced by women, notably rape, sexual violence, and other inhuman or degrading treatment.

10. In some countries, however, legislative developments and court decisions produced a tightening of asylum regulations and a narrowing of the refugee definition. Some authorities moved to restrict the refugee definition in respect of persecution at the hands of non-State agents, gender-related claims, and by overly broad interpretation of the exclusion clauses. Through such measures, refugee protection, and even access to procedures for refugee status determination, was denied to a larger number of persons in need of international protection, thus widening the gap between UNHCR's statutory obligations and the

necessary cooperation of States. Material support to some asylum-seekers was removed, and mandatory detention of asylum applicants broadened, exacerbating the hardships faced by those seeking asylum. The widespread and often prolonged detention of asylum-seekers and of stateless persons continued to be a particularly serious concern for UNHCR. Immediate return procedures were introduced for persons determined, through a highly expedited mechanism, as not falling within the refugee definition. In some countries, administrative procedures for the processing of asylum claims no longer carry adequate legal safeguards of due process; and the expansion of visa regimes, carrier sanctions, and inspections at airports abroad has closed even the possibility of entry to a number of persons who may be in need of international protection.

11. Efforts to curb illegal migration frequently include measures which do not provide adequate exemption for those seeking asylum. While many of these actions are undoubtedly directed at perceived abusers of the system, their impact is often indiscriminate. The consequence of these actions is, as a practical matter, that refugees and asylum-seekers are denied rights and protection which they should enjoy and, as a legal and institutional matter, that the real effect of the refugee protection framework is diminished.

II. ASYLUM, ADMISSION AND *NON-REFOULEMENT*

12. For many millions of people, asylum is a necessary implication of the exercise of their basic rights. Article 14 of the Universal Declaration of Human Rights recognizes that everyone has a right to seek and to enjoy in other countries asylum from persecution. The very concept of asylum has changed and developed over time; and variations exist between its scope in international standards and in some national legislation. It is used, broadly, to describe the protection provided by a State, on its territory and in the exercise of its sovereignty, to persons in need of international protection, and includes admission to safety. While it is the prerogative of the State to grant asylum to a particular individual, asylum-seekers are, at a minimum, entitled to receive temporary refuge or have their claim determined as a first step towards giving content to the right to seek and enjoy asylum in another country. For refugees, admission and asylum are preconditions to their fundamental rights and freedoms, which have been denied and transgressed elsewhere.

13. Where asylum enables the refugee to become part of a new community through local integration or resettlement, it is itself a durable solution; extended for a temporary period, it encompasses admission to safety and non-return to danger, respect for human rights, and the identification of a durable solution. Intrinsic to asylum is the prohibition, in international conventions and customary international law, of the return of a refugee to situations endangering life or freedom. As the Executive Committee has underlined, action whereby a refugee is obliged to return or is sent to a country where he or she has reason to fear persecution constitutes a grave violation of this non-derogable principle.

14. The High Commissioner's mandate includes responsibility for promoting the admission of refugees to the territories of States; and UNHCR is concerned that admission, as a key step in according initial protection, has been denied to refugees and asylum-seekers, particularly through border closures, rejection at the frontier, interdiction, and the use of non-rebuttable "safe third country"

procedures.[2] Preventing asylum-seekers from finding safety, or from obtaining access to procedures, negates their fundamental rights, and may amount to *refoulement* in breach of international law. Various Executive Committee conclusions call upon States to take a positive attitude to admission and to asylum (called, in this context, first asylum, temporary asylum or temporary refuge). The Executive Committee has, for example, recognized that the safety and physical integrity of refugees depend on respect for the basic protection principles and has urged States to continue to admit and receive refugees, pending identification of their status and of an appropriate solution to their plight; to grant at least temporary refuge to asylum-seekers in cases of large-scale influx, without discrimination; not to reject asylum-seekers at the frontier, and to observe the legal principle of *non-refoulement* in all situations of large-scale influx. Where measures aimed at discouraging abusive use of asylum procedures exist, the Executive Committee has emphasized that these must not have a detrimental effect on fundamental protection principles, including the institution of asylum.

15. On a regional level, States have also accepted the need for a liberal approach to admission for asylum purposes. The 1969 Organization of African States (OAU) Convention requires Member States to "use their best endeavours...to receive refugees" and to secure their settlement. This Convention, as well as the 1966 AALCC Bangkok Principles, disallows rejection at the frontier (as does the 1984 Cartagena Declaration). Both provide for temporary residence or provisional asylum respectively where longer-term asylum cannot be granted.

16. The principle of burden-sharing is highly relevant in this context, and the Executive Committee has called on States to take measures to ensure that the burden of the first asylum countries is equitably shared. Material and other support for the most affected countries is needed, as is the commitment to keeping borders open to asylum-seekers and respect for the principle of *non-refoulement*. The Executive Committee has also urged Governments to respond actively to the resettlement needs of refugees in this spirit. Measures which limit the availability of asylum in any country or group of countries inevitably shift the burden to other States, placing a more onerous obligation on them. Earlier discussions in this forum on comprehensive approaches and on international solidarity have reflected the complicating and even destructive effect of unilateral restrictive measures in respect of refugee protection. In recognition of this, the need for a general strengthening of international law and practice with regard to asylum, admission and *non-refoulement* needs to be recognized as an element of international burden-sharing.

17. It is essential that persons in need of international protection be admitted and identified; such persons must also be protected against *refoulement*, including to any place where they face a substantial risk of torture. Many States have successfully implemented comparatively rapid procedures at points of entry which ensure a fair and competent assessment of the need for international protection, and UNHCR encourages States to ensure the rights of the individual through proper legal safeguards, in developing such procedures. UNHCR draws particularly serious breaches to the attention of the international community,

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[2] UNHCR considers that the conclusion of formal agreements among States can enhance the international protection of refugees by leading to the orderly handling of asylum applications and ensuring some form of responsibility-sharing mechanisms. Such agreements must ensure, however, that one of the State parties will give due consideration to the asylum application within its own procedures.

underlining that in some circumstances, failures to protect the rights of refugees, asylum-seekers and stateless persons can give rise to issues of international peace and security. All possibilities for a further strengthening of the dialogue between UNHCR and States on means to strengthen basic protection principles need to be pursued.

III. REFUGEE SECURITY AND THE CIVILIAN CHARACTER OF REFUGEE CAMPS

18. Human rights law obliges States to ensure the physical safety of all persons within their jurisdiction; and all refugees, regardless of where they find themselves, are entitled to respect for security of person. As has long been recognized, refugee protection is seriously challenged in situations where the peaceful nature of asylum is not respected, whether through armed attacks on refugee camps and settlements or their militarization. While neither the 1951 Convention nor UNHCR's mandate specifically provide that refugees must not be engaged in armed activities, this was understood as an essential starting point of the non-political and humanitarian nature of the High Commissioner's work. Subsequently, it was made more explicit through the OAU Convention, as well as through various Executive Committee conclusions and resolutions of the General Assembly.

19. Exploitation of refugee situations by elements seeking to use asylum countries as bases for political and military activities is not new. In the 1970s and 1980s, some groups of exiles in the Horn of Africa, Southern Africa, South and South-East Asia, and Central America were militarily active against their countries of origin, in most cases with the support of other interested States. Such support may help explain the lack of consistent international condemnation of this phenomenon. The pattern has been echoed in the 1990s in the Great Lakes region of central Africa, where military training and support took place amidst international efforts on behalf of vulnerable civilian populations. The urgent needs of the preponderantly civilian populations and the clandestine nature of the militarization ensured that humanitarian activities continued, with no States assuming responsibilities for disarming armed elements or excluding and separating those suspected of genocide. Contrary to agreed international standards, and exacerbating the situation still further, camps were situated adjacent to sensitive borders. Failure to implement international standards in respect of the civilian nature of camps and protected populations undoubtedly contributed to the perception of refugee influxes as a threat to national and regional stability, and significantly undermined efforts to promote solutions. In terms of international law and of UNHCR's activities, the situation of militarized camps calls for a specific set of responses.[3]

20. The Executive Committee has in the past reflected at length on the sensitive issue of militarization of refugee camps and settlements. Its seminal

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[3] The situation of militarized camps is not identical to situations in which refugee populations are politicized to varying degrees, or where traditional community structures lead to the exercise of tight control over the group. These raise issues beyond the scope of this Note pertaining to the extent and nature of permissible political activity among refugees, and the complex issue of decision-making within varied social structures. The issue of voluntariness in the context of collective decision-making or decision-making by traditional leaders is discussed in UNHCR's handbook *Voluntary Repatriation: International Protection* (1996), p.41 et seq.

Conclusion No.48 on Military or Armed Attacks on Refugee Camps or Settlements affirmed that refugee camps and settlements have an exclusively civilian and humanitarian character, and that the grant of asylum or refuge is a peaceful and humanitarian act, not to be regarded as unfriendly by another State. The Executive Committee formulated key directives for enhancing the protection of refugee camps and settlements, notably that States of refuge, assisted by all other States, should do all within their capacity to ensure that the civilian and humanitarian character of such camps and settlements be maintained. Relevant organs of the United Nations were also urged to cooperate in promoting conditions which ensured the security of refugees in camps and settlements, including, wherever possible, the location of such camps and settlements at a reasonable distance from the frontier of the country of origin. The Executive Committee condemned all acts which posed a threat to the personal security of refugees and asylum-seekers, and also those which might endanger the safety and stability of States.

21. Regional developments in international law underscore the obligations of States in this regard. The Preamble to the OAU Convention recognized that refugee problems were a source of friction among many Member States, and distinguished the nature of exile for the refugee who "seeks a peaceful and normal life" and the person who flees "for the sole purpose of fomenting subversion from outside."[4] Under this Convention, States undertake to prohibit refugees residing in their respective territories from attacking any State Member of the OAU. In Latin America, the Contadora Act on Peace and Co-operation of 1983 included a commitment by States to institute appropriate measures in the receiving countries to prevent the participation of refugees in activities directed against the country of origin, while at all times respecting the human rights of the refugees.

22. These positive obligations complement the requirement that all parties, including the refugees themselves, abstain from any activity likely to detract from the exclusively civilian and humanitarian character of camps and settlements. The Executive Committee has encouraged States to intensify their efforts to protect the rights of refugees, and to prevent them from becoming the object of armed attack. Departures from these basic tenets clearly undermine the very nature of the peaceful grant of asylum, rendering it not an act of international solidarity but a potential threat to the country of origin, to the country of refuge and to refugees themselves. Similarly, UNHCR's own work shall, according to its Statute, be humanitarian and social and of an entirely non-political character. The cooperation of both State and non-State actors is indispensable to securing this.

23. UNHCR's profound concern in respect of this issue is not limited to its implications for refugee safety or for the maintenance of international law. Militarized populations in exile, particularly on a large scale, can carry

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[4] This and similar provisions have been a consistent feature of international refugee law. The Treaty on International Penal Law of 1889 notes that "Political refugees shall be afforded an inviolable asylum; but it is the duty of the nation of refuge to prevent asylees of this kind from committing within its territory any acts which may endanger the public peace of the nation against which the offence was committed." Thirty years before the OAU Convention, the Montevideo Treaty on Political Asylum and Refuge (1939) had stated that refugees "shall not be permitted to commit acts which disturb the public tranquillity."

domestic conflicts across borders, sustaining and exacerbating those conflicts, as well as igniting fresh violence in other States. Such flashpoints can rapidly become unmanageable if the international community remains passive even when the ground rules of asylum are ignored.

24. It is clear that the international community can be more active in taking measures to secure the safety of refugees and asylum-seekers. The most basic step lies in locating refugee camps away from sensitive border areas. Vigorous international action is also needed to prevent attacks on refugee camps or settlements. Greater resolve is necessary to ensure accountability through international criminal jurisdiction for serious crimes, such as the killing of unarmed civilians. In camp settings, the implementation of existing international standards to safeguard basic rights often remains theoretical, particularly in respect of women and children. The Convention on the Rights of the Child, which covers all children within the State's jurisdiction and has been signed by 190 States, has implications for protection and assistance to refugee children. It urgently requires more effective implementation.

25. To avoid undermining the institution of asylum, States must make stronger efforts to secure and to maintain a clear distinction in respect of exiles engaged in armed activities, and others, in supporting refugee assistance programmes. Necessary international monitoring and verification can, under many circumstances, be carried out by aid workers as part of their routine presence. The disarmament of armed elements and the separation of a military cadre from the population at large will normally require professional military or security expertise, if indeed the two categories of population are distinguishable, and if such an operation can be accomplished at all. UNHCR's involvement in even partially militarized camps risks jeopardizing the non-political character of the organization and the humanitarian rationale for its role. In the event that the civilian nature of a camp cannot be verified, and military elements remain, UNHCR may well be required to review its involvement, on the basis that international protection cannot be extended under such circumstances.

IV. UNHCR ACCESS TO PERSONS IN NEED OF PROTECTION

26. A key element of the institution of asylum is UNHCR's unimpeded, rapid and secure access to persons of concern, whether during flight, asylum, repatriation, internal displacement or other situations of vulnerability. Denial of such access jeopardizes the protection of refugees,[5] who themselves have a right of access to UNHCR. International protection, particularly in the context of asylum, requires monitoring of the safety of refugees and asylum-seekers, and respect for their right to contact UNHCR. Assistance and relief activities also require such access to assess humanitarian needs and to ensure the proper use of resources, consistent with protection requirements, notably in respect of women and children. The Executive Committee has called on States to provide prompt and

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[5] The 1993 General Conclusion on International Protection, (71 XLIV). (Document references cited in footnotes 5 and 6 are drawn from the Division of International Protection's compilation: *Conclusions on the International Protection of Refugees adopted by the Executive Committe of the UNHCR Programme)*.

unhindered access by UNHCR and other appropriate organizations to refugees and asylum-seekers, in numerous contexts, ranging from procedures for the determination of refugee status to ensuring the civilian nature of refugee camps and settlements.[6]

27. In recent instances, such as those in Eastern Zaire, UNHCR has been denied access to refugees, and has been refused permission to provide them with essential food and other assistance, to supervise their well-being, or to evacuate those in need. While access has frequently been impeded in the past, current international presence and monitoring arrangements, particularly in countries of origin and on the edges of ongoing conflicts, are extremely fragile, both for lack of cooperation by the authorities as well as for security reasons. In addition to falling victim to general anarchy, criminality, and landmines, all of which threaten the local population in equal measure, increased operationality by humanitarian agencies in conflict situations has raised new levels of security concerns.

28. The killing of humanitarian workers in Bosnia and Herzegovina, Burundi, Chechnya (Russian Federation) and Rwanda has underlined the extent to which humanitarian organizations operating in lawless environments are at risk from a variety of State and non-State actors. These tragic events have impeded efforts to provide protection and relief, and undermined the promotion of solutions, for which monitoring is frequently essential. It is no longer sufficient for international access to be unimpeded; a positive obligation to guarantee unhindered and safe access is also required. The Executive Committee may wish to assert this obligation, as well as to support its implementation wherever obstacles exist.

29. While much has been done to improve the security and safety of field staff at the practical level by agencies themselves, the applicable international law remains weak. The United Nations Convention on the Safety and Security of United Nations and Associated Personnel is not yet in force nor does it adequately extend coverage to humanitarian personnel. Increased efforts are needed in order to secure for UNHCR and other concerned organizations security guarantees and corresponding practical measures, as well as to establish concomitant treaty obligations. In this context, the inclusion by the International Law Commission of crimes against United Nations and associated personnel in the draft Code of Crimes against the Peace and Security of Mankind is a positive development.

V. COMPLIANCE WITH NATIONAL LAWS

30. The United Nations Declaration on Territorial Asylum provides that States granting asylum shall not permit persons who have received asylum to engage in

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[6] UNHCR shall be given prompt and unhindered access to asylum applicants, refugees and returnees (22 III, 33 (h), 72(b), 73 (b)9iii), 77(q), 79(p), and shall be allowed to supervise the well-being of persons entering reception centres, camps or other refugee settlements (22 III, 48 (4)(d). UNHCR may monitor the personal security of refugees and asylum-seekers and take appropriate action to prevent or redress violations thereof (72 e). Asylum applicants and refugees, including those being detained, shall be entitled to contact UNHCR and should be duly informed thereof (8(e)(iv), 22 III, 44(g). Governments are to ensure safe and timely humanitarian access to persons in need of protection and assistance, including the internally displaced and victims of armed conflict, as well as refugees within their territories (75 i).

activities contrary to the purposes and principles of the United Nations. It illustrates the fact that asylum comprises rights and duties on the part of both States and individuals, creating a framework under which individuals find safety and undue friction between States is avoided. As part of this framework, the 1951 Convention recognizes that refugees are to respect national laws, and UNHCR shares the preoccupation of Governments over the consequences of refugees failing to do so.

31. Serious problems can result where refugees and asylum-seekers breach national laws or fail to respect national security concerns. Local security may be undermined, together with receptiveness to asylum-seekers in general. These consequences may, in turn, endanger the grant of asylum. In acknowledgement of this, the 1951 Convention and other international refugee instruments provide several courses of action where the crimes are of a particularly serious nature, threaten national security, or endanger the community of the country of refuge. None of the refugee instruments provide protection, immunity or any exoneration to refugees for illegal acts.

32. The framing of the Refugee Convention indicates that refugees are to be brought to justice in the normal way, with full respect for their rights, including the right of *non-refoulement*.[7] The exclusion clauses are neither an intended nor an appropriate response to transgressions of host country laws, as these relate to crimes of considerable international gravity, including war crimes and crimes against humanity, as well as non-political crimes of a serious nature committed prior to entry. The obligation to enforce national laws, and to ensure that asylum-seekers and refugees do not engage in activities contrary to the purposes and principles of the United Nations, lies with the host State, which should ensure that refugees within its territory conform with its laws and with international obligations. Observance of these principles, through the application of the relevant international instruments and their effective enforcement at the national level, also helps to secure acceptance of, and to safeguard, the institution of asylum. In some instances, the obligations of refugees may be inadequately understood by the national authorities or by refugees themselves, and the capacity to enforce national law may also be lacking.

33. The OAU Convention provides that a member State may appeal to another to "lighten the burden", where the State finds difficulty, for whatever reason, in continuing to grant asylum to refugees. The 1951 Convention also foresees that refugees expelled from one country for reasons of national security and public order should be given the facilities to seek legal admission into another country.

34. UNHCR fully supports the right of States in this area, and continues to work closely with them in this regard; at the same time, it is essential that

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[7] The provisions of Article 32 indicate that the expulsion of a refugee may be contemplated only on grounds of national security and public order, and only in pursuance of a decision reached in accordance with due process of law. Article 33(2) of the Convention provides that the benefit of the obligation of *non-refoulement* may not be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is or who, having been convicted by a final judgement of a particularly serious crime, constitutes a danger to the community of that country.

these rights and obligations not be misused to justify arbitrary expulsions of refugees or unnecessary restrictions on them.

VI. CONCLUSION

35. Changes in the international environment have generated a searching review of possibilities for the protection of populations threatened or displaced by conflict, human rights abuses and persecution, and of ways in which security might be provided where refugees return to unstable conditions. It has always been acknowledged that the success of such strategies is contingent upon sufficient political will by the States directly concerned to address factors at the origin of these displacements. As refugee crises continue to demonstrate, these conditions are seldom met, and asylum remains indispensable both as an immediate response and as a solution.

36. More needs to be done to counter the threats to asylum. In securing protection for persons compelled to flee their homes and countries, a first step lies in distinguishing persons who require international protection from those who do not, and giving at least temporary protection in cases of mass influx. Without prompt, fair and efficient mechanisms for this - whether in mass influx or in individual cases - there will be risks to safety and security, as well as abuses. As a result, States may well have recourse to measures which effectively reduce available protection. In mass influx situations, military elements must be disarmed and separated from the outset. Camps or settlements should be situated at a proper distance from frontiers, and refugees' adherence to national law ensured. Where inadequate efforts are made in this regard, tensions between States are likely to be exacerbated, and infiltration of camps, as well as attacks against them, could occur. The international community must also strongly support proper access and monitoring, as critical aspects of securing protection and assistance for both refugees and returnees. For this to be effective, further legal measures to enhance the safety and security of aid workers are urgently required.

37. The international community has the necessary tools, whether legal, practical or political, to ensure that the grant of asylum remains a peaceful act, consistent with national security requirements and international law. In practice, refugee situations may overwhelm the capacity of host States in this regard, compelling increased support by other actors - States, the United Nations, other international organizations, and non-State actors - in maintaining the institution of asylum. International solidarity and burden-sharing are a real requirement in this connection, and demand significant levels of effort, resources, and commitment on the part of other States. UNHCR will continue to highlight the dilemmas confronting all parties, and the international protection framework itself. The refugee protection regime is, above all, designed to help resolve the problems of individuals whose rights and liberties are violated and threatened, and to support the rights of States to live in peace with one another. As a universal framework, however, it is only with the active participation and support of all Governments that this design can be effective, particularly in the new and more dangerous environment in which UNHCR is increasingly engaged.